



## Peaceful Uses of Outer Space and National Security

*And they shall beat their swords into plowshares,  
and their spears into pruning-hooks;  
Nation shall not lift up sword against nation,  
neither shall they learn war any more.<sup>1</sup>*

Across the street from the United Nations Secretariat Building in New York City, etched into a stone retaining wall adjacent to the public sidewalk, appears the above quotation from the Bible. Through the years, however, swords and spears have given way to increasingly more deadly armaments. It now appears that further armaments are being developed that could carry warfare into outer space. Nations' delegates at sessions of United Nations committees, including those attending "Unispace 82" at Vienna, have decried this increasing prospect.

Historically, the need for security protection of a state and its citizens has led to assertion, and recognition, of sovereignty and resulting jurisdiction over its coastal waters and its superadjacent airspace. Coexistent therewith was the right of such state to exercise military action in self-defense of any infringement of such sovereignty rights. The claim of the coastal state of sovereignty over its territorial sea is said to have been premised upon Cornelius Van Bynkershoek's popular "cannon shot rule" of one sea league or three geographical miles announced in 1645.<sup>2</sup> A 1947 opinion of the United States Supreme Court, recited: "The three mile rule is but a recognition of the necessity that a government next to the sea must be able to protect itself from dangers incident to its location."<sup>3</sup>

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<sup>1</sup>Isaiah 2(4).

<sup>2</sup>Hugo Grotius, in *THE LAW OF WAR AND PEACE* (1625) modified his prior view in *COMMENTARY ON THE LAW OF PRIZE AND BOOTY* (1604) as to freedom of the seas by recognizing that a coastal state's sovereignty could extend a short distance from its shoreline as its dominion could, in fact, be obtained over such regions of the sea.

<sup>3</sup>*U.S. v. California*, 322 U.S. 35, at 35; 91 L. Ed. 1889, at 1897.

Consideration of states' rights in airspace became an issue in the latter part of the 19th century after German balloons drifted into French territory, giving rise to the first international convention, in 1889, to discuss such subject. Writings followed championing concepts of freedom of flight, and states' sovereignty, over its superadjacent airspace. In 1909, Louis Bleriot lent further import to the problem of sovereignty over airspace when he piloted a plane from France and landed in England. In 1910, the world's first international aviation conference was held in Paris at the call of France, but was unable to reach agreement as to which of the two contending theories to accept.<sup>4</sup> However, during World War I, country after country followed France's lead in declaring its air boundaries closed. The later 1919 "Paris Convention" recognized "full and absolute sovereignty" of a state in the airspace above it, including its territorial sea.<sup>5</sup> The present convention governing civil international air flight, the "Chicago Convention of 1944" contains a recital to like effect.<sup>6</sup>

### The 1967 Outer Space Treaty

The 1967 initial space law treaty, the "Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,"<sup>7</sup> [hereinafter referred to as the "OST"] incorporated into treaty form the provisions of prior pertinent United Nations General Assembly Resolutions.<sup>8</sup> To preclude claims of sovereignty in space and possible resultant conflicts as has occurred on Earth in contentions over "effective occupation"<sup>9</sup> of newly discovered territory, the OST expressly recited that "outer space," including the moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use of occupation, or by any other means.<sup>10</sup> Further, outer space is to be "free for exploration and use by all States without discrimination of any kind. . . ."<sup>11</sup> However, the exploration and use of outer space must be "in accordance with international law, including the Charter of the United Nations, *in the interest of maintaining international*

<sup>4</sup>COOPER, *THE RIGHT TO FLY*, 1947, at 17-22.

<sup>5</sup>*Id.*, at 32. The 1919 Paris Convention was the Convention Relating to the Regulation of Aerial Navigation, dated Oct. 13, 1919.

<sup>6</sup>Convention on International Civil Aviation, 61 Stat. 1180, TIAS 1591, 15 UNTS 295. Art. I recites: "The contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory."

<sup>7</sup>18 UST 2410, TIAS 6347, 610 UNTS 205, effective Oct. 10, 1967.

<sup>8</sup>UNGA res. 1721(XVI), Dec. 20, 1961; UNGA Res. 1884 (XVIII), Oct. 17, 1963 and UNGA Res. 1962 (XVIII), Dec. 13, 1963.

<sup>9</sup>Menter, *Jurisdiction over Land Masses in Space*, an address at the American Rocket Society Space Law and Sociology Conference, Carnegie Endowment for International Peace Building, New York City, Apr. 24, 1962.

<sup>10</sup>OST, *supra* note 7, Art. II.

<sup>11</sup>OST, *supra* note 7, Art. I.

peace and security and promoting international cooperation and understanding"<sup>12</sup> (underscoring added).

## Military Use of Space

### Article IV, OST

The OST, with stated exceptions, permits the military use of space. Article IV of the OST recites an "undertaking" of states' parties to the treaty, not to place in earth orbit "objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner." It must be noted that the foregoing carefully worded prohibition applies solely to "nuclear weapons or other kinds of weapons of mass destruction." That a general prohibition of military weapons was not intended is clear from a review of the negotiated history leading to the OST and its predecessor U.N. Resolution 1962 (XVIII), of December 13, 1963.

The reported verbatim UN COPUOS discussion preceding adoption of the U.N. Resolution included statements urging inclusion of a principle that outer space should be kept free from military use.<sup>13</sup> Inclusion of such provision was not accepted in the belief that it should be considered in general disarmament proposals.<sup>14</sup> For similar reasons, suggestions to include in the OST a ban on satellite launches for military purposes (which type had already been launched by the U.S. and by the U.S.S.R.) were not accepted.<sup>15</sup>

The second paragraph of article IV of the OST does impose some additional enumerated constraint on military activities on the moon and other celestial bodies. It expressly forbids thereon the "establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military maneuvers. . . ." However, the use of military personnel or of any equipment or necessary facility for peaceful purposes on the moon or other celestial bodies is expressly recognized. It may be noted that while this paragraph provides that the moon and celestial bodies are to be used by all states parties to the OST "exclusively for peaceful purpose,"

<sup>12</sup>OST, *supra* note 7, Art. III.

<sup>13</sup>*E.g.*, in UN Doc. A/C.1/PV 1342, Dec. 2, 1963, Mr. Fahmy of UAR stated at 62 ". . . many delegations. . . made the point that it was possible to conclude an international agreement prohibiting. . . any activity of a military nature in this new field [space]."

<sup>14</sup>*Id.* See, *e.g.*, at 41 for the statement of Amb. Fedorenko, head of U.S.S.R. delegation: "This draft resolution does not and could not, of course, deal with the matter of military use of Outer Space. As the members of the Committee all know, the Soviet Union has often stated that it is prepared, within the framework of a programme of general and complete disarmament under strict international controls, to destroy all types of weapons. That would also solve the problem of prohibiting the use of space for military purposes. However, . . . we do not agree with attempts to divorce the matter of military uses of outer space from other matters of disarmament which are intimately linked with it. . . ."

<sup>15</sup>Dembling, and Arons, *The Evolution of the Outer Space Treaty*, 33 J. OF AIR LAW AND COMMERCE, 433-434 (1967); JASENTULIYANA, and LEE, *MANUAL ON SPACE LAW*, Vol. 1, at 8, 14 (1979).

a similar recital is *not* made in the prior paragraph of article IV relative to outer space generally. It is noted, however, that the preceding Article III recites that states' activities in the use of outer space *shall* be carried on in accordance with international law, including the U.N. Charter "in the interest of maintaining international peace and security. . . ." Further, article 2(4) of the United Nations Charter mandates that all members shall refrain in their international relations from any action inconsistent with the purposes of the United Nations—the first purpose recited in Article 1 being . . . to maintain peace and security. . . ."

### *The Meaning of "Peaceful Purposes"*

Of vital import is to determine the military activities that may be considered within the conditioning phrase "for peaceful purposes."

In 1958, the American Bar Association (ABA) International Law Section's initial Committee on the Law of Outer Space<sup>16</sup> suggested a systematic survey of the growing body of "Space Law" literature. The requested survey was desired "as a first step towards developing recommendations with regard to a law of outer space." The study, funded by NASA under a contract with the American Bar Foundation, was to include a "review and analysis of all available space literature and proposals which have been made for the control and administration of outer space activities" in addition to "conduct research on the law of outer space."<sup>17</sup> The Foundation submitted its "Report to the National Aeronautics and Space Administration" in July 1961. In a section on "The Legal Status of Space," a discussion is included of "The Problem of 'Peaceful Purposes': Military Uses." In part, it states: "One difficulty is that the word 'Peaceful' is used in various contexts. In the sense of the U.N. Charter, and in international law generally, it is employed in contradiction to 'aggressive'." An example given was the maintenance of a naval-force-in-being on the high seas without violation of international law. Further, the report relates:

. . . For the time being it seems that the only uses of space that are prohibited are those within the prohibition of the Charter, and that until a disarmament agreement dealing with space activities can be arrived at, the United States is justified in using space for non-aggressive military uses consistent with the terms of the Charter. . . .<sup>18</sup>

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<sup>16</sup>The Committee was chaired by the immediate past-president of the ABA, David F. Maxwell, with Andrew Haley (a founder of the IAF and of the IISL) as Vice-Chairman. Mr. Haley later succeeded to the Committee chairmanship, with the present writer as Vice-Chairman. Upon Mr. Haley's untimely death in 1966, the writer was appointed and served as chairman. The committee is now the Aerospace Law Committee of the ABA International Law Section.

<sup>17</sup>See "Forward," at i, of published Report by American Bar Foundation, Chicago, Ill., July 1961. Project Reporters in charge of conducting the research and who prepared the report were Prof. Leon Lipson of Yale Law School and Nicolas de B. Katzenbach, then of the University of Chicago Law School and later Attorney General of the U.S. The ABA International Law Section's Committee on the Law of Outer Space served as an Advisory Committee on the project. The writer served as a member of the Advisory Committee to both the 1961 and to the later similar American Bar Foundation 1970 projects.

<sup>18</sup>*Id.*, at 25, 26.

As this report was rendered to NASA, government personnel concerned had knowledge of these views in their preparation of U.S. positions for UN COPUOS discussions towards the formation of the OST.

From man's earliest time, his inventions frequently have had both civil and military uses. The national security of a state dictates that space systems available to them be utilized to enhance military readiness and capability. These may include passive systems for navigation, weather forecasting, communication, mapping and geodetic measurement, nuclear explosive detection and monitoring, ballistic missile early warning, photo reconnaissance and surveillance for arms control treaty monitoring.<sup>19</sup> The maintenance of international peace and security also has required forces in being, fully armed as a deterrent and for defense against attack by a hostile foreign power. Such ready forces are recognized as "non-aggressive" consistent with international law and the United Nations Charter. The existence of the U.S. Strategic Air Command (SAC) as an alert deterrent force in being to keep the peace has never been considered as a violation of the U.N. Charter, even when nuclear armed.

Thus, except for the restrictions set out in article IV of the OST, states, if desired, may undertake military readiness in outer space analogous to having armed naval vessels on, and armed aircraft on alert in flight over, international waters.<sup>20</sup> Such military activities extending into outer space must be in the interests of maintaining international peace and security. While aggressive action is precluded, the right of self-defense may be exercised by a state in response to "imminent" armed attack under article 51 of the U.N. Charter.<sup>21</sup>

In a United States Senate Committee review of the "Negotiation of Treaty Provisions" of the OST, note was made of a problem of translation to resolve different meaning and construction of key terms in the Russian and English languages. It recites: ". . . In Russian, the word for 'military' essentially means warlike rather than pertaining to the armed services of a country; in the United States, 'peaceful' is not regarded as the opposite of 'military'—we think of 'peaceful' as 'non-aggressive'."<sup>22</sup> It would appear from the above that both powers are agreed that non-aggressive armed services employment falls within the concept of "peaceful uses" as used in the OST.

<sup>19</sup>Reed, and Norris, *Military Use of the Space Shuttle*, 13 AKRON L. REV. 665, at 666, 684. This article contains an excellent recital of military use of outer space and of its governing law.

<sup>20</sup>The possible emotional reaction difference in having weapons circling above a state and over the high seas is apparent; however, if not a weapon of mass destruction, it is not presently included in the prohibitions under art. IV, OST. This is *not* to infer that *weapons stationed in space* are forthcoming by the U.S. Known U.S. plans are to harden space systems to assure survival. The former U.S. Air Force Chief of Staff has stated that U.S. anti-satellite plans contemplate missile launch from high flying F-15 aircraft (statement by Gen. Lew Allen, at News Conference, June 21, 1982).

<sup>21</sup>Reed and Norris, *supra*, note 19, at 683.

<sup>22</sup>U.S. Sen. Doc., 90th Cong., Staff Report (Comm. Print), Committee on Aeronautical and Space Sciences, on "Analysis and Background Data" of OST, March 1967, at 11.

## United States Policy

### *Congressional Declaration*

Long before the drafting of the OST and the U.N. General Assembly adoption of its predecessor resolutions, U.S. space undertakings were to be "for peaceful purposes," whether conducted by civil or military agencies of the government. The National Aeronautics and Space Act of 1958 contains a "Declaration of Policy and Purpose" proclaiming: "The Congress hereby declares that it is the policy of the United States that activities in space shall be for peaceful purposes for the benefit of all mankind." NASA, a civilian agency, was created and charged with exercising control over space activities sponsored by the United States "except that activities peculiar to or primarily associated with the development of weapons systems, military operations, or the defense of the United States. . . shall be the responsibility of, and shall be directed by the Department of Defense. . . ." <sup>23</sup> Thus, it is apparent that at the time of the enactment in 1958 of the basic legislation for U.S. space endeavors, space activities associated with weapons systems, military operations or defense of the United States were considered to be "for peaceful purposes."

### *Presidential Pronouncements*

In remarks at Edwards Air Force Base, California, on the occasion of the return landing on July 4, 1982 of the space shuttle "Columbia," President Reagan stated U.S. space goals as including ". . . cooperating with other nations to maintain the freedom of space for all activities that enhance the security and welfare of mankind; and strengthening our U.S. security by exploring new methods of using space *as a means of maintaining the peace.*" <sup>24</sup> (Underscoring added)

The President, on that occasion, also announced the release that day of a "Space Policy" for his administration, which followed a ten month review of the national space program. <sup>25</sup> Basic goals of the Space Policy also include: maintaining U.S. space leadership; obtaining economic and scientific benefits through the exploitation of space; promoting international cooperative activities; and expanding U.S. private sector investment and involvement in civil space and space related activities.

Principles underlining the conduct of the U.S. space program are recited as: commitment to the exploration and use of space by all nations "for peaceful purposes and for the benefit of mankind" ("peaceful purposes" is said "to allow activities in pursuit of national security goals"); rejection of

<sup>23</sup>Sec 102(a) and (b), 72 Stat. 426, 42 U.S.C. 2451.

<sup>24</sup>White House Press Release, Remarks of the President at Edwards Air Force Base, California, upon arrival of Space Shuttle "Columbia," July 4, 1982.

<sup>25</sup>White House Fact Sheet, National Space Policy, July 4, 1982. A summary of basic goals and of the underlying principles of the Policy follow in this article.

any limitations "on the fundamental right to acquire data from space;" considering the space systems of any nation to be national property "with the right of passage through and operation in space without interference" (purposeful interference to be viewed "as an infringement upon sovereign rights"); encouragement of domestic commercial exploitation of space capabilities, technology and systems for national economic benefit—such activities to be "consistent with national security concerns, treaties and international agreements;" conducting international cooperative space-related activities that achieve scientific, economic, or national security benefits for the United States; the U.S. space program to consist of two separate, distinct and strongly interacting programs—national security and civil—with close coordination, cooperation and information exchange to be maintained between them to avoid unnecessary duplication; the primary launch system for both national security and civil government missions will be the U.S. Space Transportation System (STS, i.e., Shuttle, upper stages and related facilities) with its capabilities and capacities being available "to authorized users—domestic and foreign, commercial and governmental;" pursuit of activities in space in support of the U.S. right of self defense; and continuing study of space arms control options—including consideration of verifiable and equitable arms control measures "that would ban or otherwise limit testing and development of specific weapon systems, should these measures be compatible with U.S. security."

The President's National Space Policy Directive, in regard to the development and operation of the Space Transportation System (STS) provides that STS be afforded "the degree of survivability and security protection required for a critical national space resource." The policy further relates that national security space programs will support such functions as "command and control, communications, navigation, environmental monitoring, warning, surveillance and space defense."

The national security space program is stated to include the development of an anti-satellite (ASAT) capability, the primary purpose of which is to deter a known operational anti-satellite system potentially hostile to U.S. and Allies' space systems, and "within such limits imposed by international law, to deny any adversary the use of space-based systems that provide support to hostile military forces."

The Policy Directive further establishes a Senior Interagency Group (SIG) on Space to provide a forum to all federal agencies for their policy views, to review and advise on proposed changes to national space policy, and to provide for orderly and rapid referral of space policy issues to the President for decision as necessary.

I believe that perusal of the National Space Policy, above related, reveals that it is consistent with the Congressional Declaration of Policy and assignment of responsibilities to NASA and the Department of Defense; it is also not in conflict with international law, including the OST and the United Nations Charter—it's national security proposals being for peaceful

purposes, as herein previously discussed.<sup>26</sup>

President Reagan, from the beginning of his administration has shown his dedication to improve the defense posture of the United States. That the Congress has concurred in his assessment of this need for the defense of the United States and its Allies is apparent from its appropriations to this end. With this determination, it is logical that the high frontier be included.

## Maintaining the Peace

### *Treaty Compliance Verification*

The OST was opened for signature on January 27, 1967. In the U.N. General Assembly's consideration the previous month of the then draft treaty, the U.S. Representative to the United Nations, Ambassador Arthur J. Goldberg, on December 17, 1966, in reference to article IV, observed that "Quite as important as these arms control provisions are the means available for assuring each party that the others are living up to them. . . ."<sup>27</sup> The "means" required involve observation, detection and, if necessary, the capability of negating a space based weapon of mass destruction capability. In the United States, operation of a Space Detection and Tracking Center has been the responsibility of the North American Aerospace Defense Command (NORAD). Its network of radar, radio and optical sensors provide it with information on earth orbiting satellites.<sup>28</sup>

During the ceremony on the return of Astronauts Thomas Mattingly and Henry Hartsfield from the space shuttle "Columbia" flight on July 4, 1982, President Reagan stated: "In the area of national security, our space systems have opened unique opportunities for peace by providing advanced methods of verifying strategic arms control agreements. . . ."<sup>29</sup>

### *Security Considerations*

A former Chief of Staff of the United States Air Force, General J.P. McConnell, in an address on January 13, 1966, before the National Security Industrial Association in Los Angeles, California, stated:

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<sup>26</sup>See discussion in text recital on "Article IV, OST" and "The Meaning of Peaceful Purposes" under the subtitle "Military Uses of Space." While giving greater emphasis on national security, the newly announced National Space Policy is said as in the main as not representing change from the goals and principles of the prior administration policies (statement of John H. Gibbons, Director, Office of Technology Assessment, U.S. Congress, at Hearings, August 4, 1982 of House of Representatives Subcommittee on Space Science and Applications of the Committee on Science and Technology, 97th Cong., at 21, 22.

<sup>27</sup>U.S. Sen. Doc., *supra*, note 22, at 16.

<sup>28</sup>The NORAD Space Inventory, as of 1800Z, May 18, 1983, reveals an observed total of 4895 objects in space, viz: 1) in Earth orbit—1262 payloads (441, U.S.; 713, U.S.S.R.; 108, other states) and 3620 pieces of debris (2164, U.S.; 1306, U.S.S.R.; 150 other states) and 2) in deep space—57 space probes (30, U.S.; 25, U.S.S.R.; 2, other states) and 56 pieces of space probe debris (44, U.S.; 11, U.S.S.R.; 1, other states).

<sup>29</sup>White House Press Release, *supra*, note 24.



. . . history shows that military weapons and strategy tend to exhibit every possible medium for offensive action, and we must assume that this might also be true for space. Our only alternative, therefore, is to learn as much as we can about the space medium so that, if and when a threat should begin to materialize, we have the knowledge and 'building blocks' to develop a proper defense against it.

The threat having been determined to materialize, building blocks are being developed to provide the necessary defense. In the current National Space Policy announcement, President Reagan stated that U.S. goals for peace include ". . . promoting international uses of space, freedom of space, cooperating with other nations to maintain the freedom of space for all activities that enhance the security and welfare of mankind, strengthening our own security by enforcing new methods of using space as a means of maintaining the peace."<sup>30</sup>

The Policy Directive does not contemplate aggressive action by the United States, nor does it diminish its often stated policy of the need and purpose of deterrents. The U.S. Secretary of Defense, Casper W. Weinberger, on April 20, 1982, in emphasizing the importance of deterrence to national security, stated:

If I had to state the essence of the Administration's defense policy, it would be this: we seek to deter. . . aggression against the United States and its allies by maintaining the capability to respond effectively at the lowest level of violence. . . .<sup>31</sup>

A short time earlier, President Reagan on April 5, 1982, at a press conference in response to a query on this theme, stated: ". . . our goal is peace. And we have peace, we must have a deterrent that would prevent someone from adventuring aggressively in the world. . . ."<sup>32</sup>

In a September 1982 periodical, Secretary of the Air Force Verne Orr related that the United States must ensure its right to access and free passage in space, and must maintain a vigorous technology program "to exploit future capabilities in space while protecting critical space assets." To these ends, an effective and coherent space organization was said to be necessary and a first step towards such ends was the creation, effective September 1, 1982, of a U.S. Air Force Space Command, with headquarters in Colorado Springs, Colorado.<sup>33</sup>

The Space Command was created to consolidate existing USAF operational space activities. The command will also provide a link between the space related research and development process and operational users. The North American Aerospace Defense Command (NORAD) authority and responsibilities remain as currently organized. A Consolidated Space Operations Center for the Space Command is to be built at Colorado

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<sup>30</sup>*Id.*

<sup>31</sup>Statement to council on Foreign Relations, New York City, April 20, 1982.

<sup>32</sup>Presidential Documents, Vol. 18, No. 14, at 442, April 5, 1982.

<sup>33</sup>Orr, *Thoughts at Thirty-Five; The Air Force's Future is Now*, AIR FORCE MAG., September, 1982, at 94.

Springs.<sup>34</sup> The Space Command program will include "overseeing future Shuttle flights with national security missions and controlling surveillance, warning and weather satellites. . ."<sup>35</sup>

## **The Danger to Life on Earth**

### *The Growing Apprehension*

We do not know of any other planet having life, as on earth. We do know that life on earth is the result of its environment and it's dependent upon protection of the biosphere. We also know that dinosaur life of the Mesozoic era on earth became extinct because of an event which so polluted the atmosphere that life could not be sustained. We know, too, that detonation in war of today's arsenal of nuclear weapons with its radiation fall-out effects could result in an unprecedented holocaust upon life on earth.

People the world over are familiar with and apprehensive of the consequences of a nuclear war between major powers. A growing public psychological fear of life becoming in jeopardy is evident from media reports and analysis and statements of delegates at international meetings, both governmental and non-governmental.

It is recognized that each governmental alliance may feel that its potential adversary's increase in military readiness is for offensive action and therefore increase its arsenal of weapons and technology to obtain the stance it believes will prove a sufficient deterrent to any attack against it. Thus, each alliance's arsenal of weapons may continue to grow and augment the psychological state of uneasiness.

Realism should dictate that a formula must be found to obviate the possibility of a nuclear holocaust. Further, we must strive to resolve international disputes by non-violent means. Unilateral disarmament is fruitless. Events have shown that we are far removed from realizing the vision of Isaiah of nation not lifting sword against nation nor of any further learning of war.

## **Efforts to Lessen Danger of War**

### *International Agreements*

Karl von Clausewitz, the renowned writer on the theory of warfare is reputed to have stated: "Surprise lies at the foot of all operations." Both the U.S. and the U.S.S.R. have satellites designed, through sensors and observation, to reduce the element of surprise. This should tend to thwart initiation of hostilities between them. Additionally, the U.S. and the U.S.S.R. have entered into agreements to refrain from interference with

<sup>34</sup>Hq., U.S. Air Force Press Release on Creation of the Space Command, June 21, 1982.

<sup>35</sup>Orr, *supra*, note 33.

each other's early warning system,<sup>36</sup> to prohibit the deployment of ABM systems (including space based),<sup>37</sup> and agreements with respect to limitation of strategic offensive arms<sup>38</sup> (Salt I; while now expired, its provisions are being complied with). The treaty against ABM deployment also recited the declared intention of both states to achieve cessation of the nuclear arms race and to take "effective measures towards reduction of strategic arms, nuclear disarmament, and general and complete disarmament." Currently, discussions are being held with the view of formulating a Strategic Arms Reduction Treaty (START).<sup>39</sup>

In referring to a nuclear war, President Reagan, in a letter reply of June 14, 1982, to a syndicated newspaper columnist, wrote ". . . It is indeed my highest priority to deter and prevent such a war, for its consequences would be disastrous for mankind. That is why I've called for negotiations leading to major arms reductions. . ."<sup>40</sup> The former Secretary of State, Alexander M. Haig, Jr., in an address on April 6, 1982, stated that:

. . . The catastrophic consequences of another World War—with or without nuclear weapons—makes deterrence of conflict our highest objective, and our only rational strategy in the modern age. . . .

We seek to reduce the risk of war and to establish a stable military balance at lower levels of risk and effort. By doing so today, we may be able to build a sense of mutual confidence and cooperation, offering the basis for more ambitious steps tomorrow. But, above all, we shall be pursuing the highest possibility for peace.<sup>41</sup>

### *UN Resolutions*

The United Nation's General Assembly's 36th Session, on December 9, 1981, adopted forty-eight resolutions on disarmament, most of which reaffirmed the Assembly's past decisions on disarmament. With one exception, all the resolutions were recommended by the U.N. First Committee (Political and Security).<sup>42</sup> Under Resolution 36/92D, all states were requested to observe the principles in the Declaration on International Cooperation for Disarmament so as to secure a constructive mutual dialogue at limiting

<sup>36</sup>Agreement on Measures to Reduce the Risk of Outbreak of Nuclear War, September 30, 1971, 22 UST 1590, TIAS 7186, 807 UNTS 57 (effective September 30, 1971); and Agreement on the Prevention of Nuclear War, June 22, 1973, 24 UST 1478, TIAS 7654 (effective June 22, 1973).

<sup>37</sup>Treaty on the Limitation of Anti-ballistic Missile Systems, May 26, 1972, 23 UST 3435, TIAS 7503 (effective October 3, 1972).

<sup>38</sup>Interim agreement on Certain Measures with Respect to the Limitation of Strategic Offensive Arms, with Protocol (Salt I) with agreed Interpretations, Common Understandings, and Unilateral Statements, 23 UST 3462, TIAS 7504 (effective October 3, 1972; expired).

<sup>39</sup>A generally similar recital is contained in the preamble of the Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Under Water, August 5, 1963, 14 UST 1313, TIAS 5433, 480 UNTS 43 (effective October 10, 1963).

<sup>40</sup>THE WASHINGTON POST, June 14, at C8.

<sup>41</sup>Address to Georgetown University's Center for Strategic and International Studies, Washington, D.C., April 6, 1982.

<sup>42</sup>UN Monthly Chronicle, Vol. XIX, No. 3 (March 1982), at 37.

armaments, particularly nuclear weapons, through the conclusion of agreements, keeping in mind the ultimate objective of general and complete disarmament under effective controls.<sup>43</sup>

By a vote of 129 in favor to none against, with thirteen abstentions, the Resolution 36/97C, entitled "Preventing an Arms Race in Outer Space," was adopted by the U.N. General Assembly.<sup>44</sup> In pertinent part, it recited that the General Assembly:

1. *Considers* that further effective measures to prevent an arms race in outer space should be adopted by the international community;

2. *Urges* all States, in particular those with major space capabilities to contribute actively to the goal of preventing an arms race in outer space and to refrain from any action contrary to that aim;

3. *Requests* the Committee on Disarmament to consider, as from the beginning of its session in 1982, the question of negotiating effective and verifiable agreements aimed at preventing an arms race in outer space, taking into account all existing and future proposals designed to meet this objective;

4. *Requests* the Committee on Disarmament to consider as a matter of priority the question of negotiating an effective and verifiable agreement to prohibit anti-satellite systems, as an important step towards the fulfillment of the objectives set out in paragraph 3 above;

5. *Requests* the Committee on Disarmament to report on its consideration of this subject to the General Assembly at its thirty-seventh session;

6. *Requests* the Secretary-General to transmit to the Committee on Disarmament all documents relating to the consideration of this subject by the General Assembly at its thirty-seventh session;

7. *Decides* to include in the provisional agenda of its thirty-seventh session an item entitled "Prevention of an armed race in outer space and prohibition of anti-satellite systems."<sup>45</sup>

By letter of August 10, 1981 addressed to the U.N. Secretary-General, the U.S.S.R. requested inclusion on the agenda of the General Assembly's 36th session of an item entitled "Conclusion of a Treaty on the Prohibition of the Stationing of Weapons of any Kind in Outer Space."<sup>46</sup> The item was placed on the agenda and considered by the General Assembly in the context of disarmament. This led to the adoption on January 15, 1982, of Resolution 36/99 concerning preparation of a treaty to prohibit stationing of weapons in outer space. It recited that the General Assembly:

1. *Considers it necessary* to take effective steps, by concluding an appropriate international treaty, to prevent the spread of the arms race to outer space;

2. *Requests* the Committee on Disarmament to embark on negotiations with a view to achieving agreement on the text of such a treaty;

<sup>43</sup>*Id.*, at 42-43.

<sup>44</sup>U.N. Monthly Chronicle, *supra*, note 42, at 48; This resolution was submitted by a group of Western States (UN Disarmament Yearbook, Vol. 6; 1981, at 267, 271, 272). The Resolution received U.S. vote for adoption.

<sup>45</sup>U.N. Doc., A/Res/36/97, December 9, 1981.

<sup>46</sup>U.N. Doc., A/Res/36/192, August 20, 1981; *see* annex attached to Resolution for text of proposed treaty. For a brief summary of UNGA consideration of the Soviet draft treaty, *see* Goedhuis, *Some Observations on the Efforts to Prevent a Military Escalation in Outer Space*, 10 J. SPACE L. 13, at 21.

3. *Desires* to include in the provisional agenda on its thirty-seventh session the item entitled "Conclusion of a treaty on the prohibition of the stationing of weapons of any kind in outer space."<sup>47</sup>

The Committee on Disarmament convened in Geneva for the second part (August 3–September 16) of its 1982 session. During the first part (June 7–July 9) of its session at U.N. headquarters, the Committee's agenda Item 7 concerned the U.N. General Assembly's request relative to a treaty on the prohibition of stationing weapons in outer space. The committee considered it at plenary and informal meetings. Among the proposals made was one for the conclusion of a treaty on the prohibition of stationing any kind of weapon in outer space as the best means of solving the problem of preventing an arms race in outer space. Another proposal concerned the negotiation of effective and verifiable agreements to prevent an arms race in outer space, including prohibition of anti-satellite systems. These and other proposals on this item were also considered during the second part of the Committee on Disarmament session in Geneva.<sup>48</sup>

### *UNISPACE '82*

The second U.N. Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE '82), was held in Vienna, August 9–21. The conference had three committees with one of the three major subjects of the conference. Each committee, however, was seriously concerned with the spectre of war in space and a desire to arrest the growing military use of space. A "Declaration of the Group of 77" (being actually composed of representatives of 120 states) reflects an apparent ground-swell world concern as to militarization of space. The declaration, in part recited:

The position of the Group 77 nations is that testing, stationing and deployment of any weapons in Space should be banned. The Group of 77 considers necessary the adoption of a legal instrument that definitely bans the emplacement of weapons in outer space and verifiable controls and guarantees. . . .<sup>49</sup>

The Unispace '82 Conference in its final day, in Plenary Session, adopted by consensus a "Text resulting from the consultations of the 'Friends of the President,' " providing in part:

1. . . . All nations, in particular those with major space capabilities, are urged to contribute actively to the goal of preventing an arms race in Outer Space and to refrain from any action contrary to that aim.

2. The maintenance of peace and security in Outer Space is of great importance for international peace and security. The prevention of an arms race and hostilities in Outer Space is an essential condition for the promotion and continuation of international cooperation in the exploration and use of Outer Space for peaceful purposes.

<sup>47</sup>U.N. Doc., A/Res/36/99., January 15, 1982.

<sup>48</sup>See Special Report of the Committee on Disarmament, UN GAOR 12th Special Session, Supp. 2 (AS-12/2), ¶¶ 81–83. The proposal against weapons of any kind in outer space was contained in CD/274.

<sup>49</sup>U.N. Doc., A/CONF. 101/5, August 13, 1982.

3. The Conference strongly recommends that the competent organs of the United Nations in particular the General Assembly, and also the Committee on Disarmament when dealing with measures aimed at a prevention of an arms race in Outer Space, in particular those mentioned in the relevant resolutions of the General Assembly, give appropriate attention and high priority to the grave concern expressed above."<sup>50</sup>

As previously noted, part 2 of the 1982 Session of the U.N. Committee on Disarmament, at Geneva (August 3–September 16) considered proposals on resolving the issue of an arms race in outer space.

It is apparent that states, to secure their national security, have relied upon a strong military posture to deter and, if necessary, to defend against aggression. It is the U.S. view that its military utilization of outer space may deter aggression from any direction, and thus significantly enhance security and retention of world peace. However, it shares the desire of ultimate disarmament and for meaningful agreements to such end. The negotiated history of the OST and statements made at the White House ceremony at the signing of the treaty, reveal that steps beyond the limited article IV OST provisions would be considered in future disarmament considerations.<sup>51</sup>

The U.S. Secretary of the Air Force, Verne Orr, in his September 1982 published article further stated that “. . . Arms-control decisions today can reduce the risk of war tomorrow if they can enhance the stability of the strategic balance.”<sup>52</sup> It will be recalled that the National Space Policy, announced on July 4, 1982, and previously related herein, included as a principle underlying U.S. space goals the study of space arms control options and the consideration of verifiable and equitable arms control measures that would ban or otherwise limit testing and deployment of specific weapons systems, should such measures be compatible with U.S. national security.

### *Assurance of National Security*

I believe that to have U.S. and other states approval of an arms control agreement, there must be assurances of compliance verification. I presume France must have had this in mind in its 1978 proposal to the United Nations for an International Monitoring Agency as a means toward regional and general disarmament agreements.<sup>53</sup> It remains under active

<sup>50</sup>U.N. Doc., A/CONF. 101/L.4., August 20, 1982.

<sup>51</sup>See Menter, *The Developing Law for Outer Space*, A.B.A.J. (August 1967), 703, at 707. Among the remarks made at the White House ceremony on January 27, 1982, were those of Amb. Dean of Great Britain, stating “We all take today an important step towards our ultimate goal; the creation of a world in which men can live in harmony, free from fear or war.” The writer and his wife were guests at the signing ceremonies. See also *supra*, note 41.

<sup>52</sup>Orr, *supra*, note 33.

<sup>53</sup>UN Doc. A/S-10/AC. 1/7, June 1, 1978, “Adoption of a Program of Action on Disarmament.” By subsequent UN Res 33/71, December 14, 1978, the UNGA requested the UN Secretary-General at France’s suggestion, to undertake a study by qualified experts on the technical, legal and financial implications of establishing an international satellite monitoring

consideration and is anticipated as an agenda item of the U.N. General Assembly at its 38th (1983) Session.<sup>54</sup>

The United States from the beginning of its space activities, through government (NASA) and private (COMSAT) agencies has sought international participation in space endeavors. The world is still at the dawn of the great space age with unlimited opportunities of achievement through space endeavors for the benefit of mankind. Scientific undertakings in space have revealed how fragile life is on our planet, and of the need to protect its environment. From delegates' statements at United Nations Sessions (such as COPUOS, UNISPACE '82, First Committee, Disarmament Committee, and the General Assembly), a general belief appears to exist that a growing militarization of space may lead to armed conflict which could have devastating effects on life on earth. It has also been noted that destruction of spacecraft in outer space could add innumerable pieces of "shrapnel" into the "debris belt" building about the earth and increase the hazard to space transportation, stations, habitats and activities.<sup>55</sup>

The national emblem of the United States portrays the American Eagle with arrows in one claw and an olive branch in the other, reflecting resolution for defense as well as the desire for peace—to work and live in harmony with all states. The fear by a state of its security being in jeopardy leads to augmenting its military posture. If such fear can be reduced, its willingness to reduce its armaments may more readily follow. The likelihood of armed conflict can be reduced and that of arms control agreement(s) approved, when states—particularly potential adversaries—work together in imaginative and worthwhile peaceful space endeavors.

I look to the day when the U.S. and U.S.S.R. will jointly undertake such endeavors for the betterment of all peoples on our common Spaceship Earth.

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agency. Following submission of such report, the UNGA in Res. 34/83E, December 11, 1979, requested an in-depth study to be carried out and submitted to the Preparatory Committee for the UNGA Second Special Session on Disarmament which met June 7–July 10, 1982. The group of experts' in-depth study, upon completion, was submitted on June 10, 1981, to the Secretary-General and is annexed to UN Doc. A/AC. 206/14., August 6, 1981. The concluding document (UN Doc. A/S-12/32, July 9, 1982) took note of the French proposal (UN Doc. A/S-12/1C.1/55, June 29, 1982) and of the experts' study of the implications of establishing the international monitoring agency (as set out in the annex to UN Doc. A/AC. 206/14). The Disarmament Session document requested: 1) the UN Secretary-General to report on practical arrangements for implementing conclusions of the study with regards to its institutional aspects, and 2) the UNGA to include the item on the UNGA provisional agenda for its 38th (1983) Session.

<sup>54</sup>*Id.*, last recital.

<sup>55</sup>For a discussion of the hazards of space debris about the earth, see Menter, *Legal Regime of International Space Flight*, PROCEEDINGS OF THE TWENTY-FIRST COLLOQUIUM ON THE LAW OF OUTER SPACE, Dubrovnik, Yugoslavia, October 1–8, 1978, p. 126, at 127, 128.

